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**Georgia Department of Revenue**  
**Informational Bulletin IT-2013-10-25**  
**U.S. Supreme Court and the Defense of Marriage Act**  
**October 25, 2013**

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1) **Purpose:** This informational bulletin provides guidance with respect to Rev. Ruling 2013-17, the IRS's response to the U.S. Supreme Court's decision in U.S. v. Windsor, which struck down portions of the Defense of Marriage Act.

2) **Supersedes:** All previous documents and any oral directives in conflict herewith.

3) **Authority:**

1. United States v. Windsor, et al., 570 U.S. \_\_\_\_, 133 S. Ct. 2675 (2013).

2. Rev. Rul. 2013-17, 2013-38 IRB, which holds as follows:

1. For Federal tax purposes, the terms "spouse," "husband and wife," "husband," and "wife" include an individual married to a person of the same sex if the individuals are lawfully married under state law, and the term "marriage" includes such a marriage between individuals of the same sex.

2. For Federal tax purposes, the Internal Revenue Service adopts a general rule recognizing a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

3. For Federal tax purposes, the terms "spouse," "husband and wife," "husband," and "wife" do not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state, and the term "marriage" does not include such formal relationships.

3. Georgia Constitution, Article I, Section IV, Paragraph I, which reads as follows:

Recognition of marriage. (a) This state shall recognize as marriage only the union of man and woman. Marriages between persons of the same sex are prohibited in this state.

(b) No union between persons of the same sex shall be recognized by this state as entitled to the benefits of marriage. This state shall not give effect to any public act, record, or judicial proceeding of any other state or jurisdiction respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other state or jurisdiction. The courts of this state shall have no jurisdiction to grant a divorce or separate maintenance with respect to any such relationship or otherwise to consider or rule on any of the parties' respective rights arising as a result of or in connection with such relationship.

4. The pertinent part of O.C.G.A. § 48-7-27(a), which reads as follows:

(a) Georgia taxable net income of an individual shall be the taxpayer's federal adjusted gross income, as defined in the United States Internal Revenue Code of 1986, less:

(1) Either the sum of all itemized nonbusiness deductions used in computing federal taxable income if the taxpayer used itemized nonbusiness deductions in computing federal taxable income or, if the taxpayer could not or did not itemize nonbusiness deductions, then a standard deduction as provided for in the following subparagraphs:

5. O.C.G.A. § 48-7-20 relating to tax rates.
6. O.C.G.A. § 48-7-26 relating to exemptions.

#### **4) Issues:**

For Georgia income tax purposes, does Georgia follow the holdings of Rev. Rul. 2013-17?

#### **5) Discussion of Issue:**

In U.S. v. Windsor, the U.S. Supreme Court (the Court) struck down portions of the Defense of Marriage Act (DOMA), which prohibited same-sex couples from being considered married for purposes of Federal law, including Federal income tax law. Although it struck down portions of DOMA, the Court did not strike down Section 2, which provides that a state shall not be required to recognize marriages entered into in other states that are at odds with the state's public policy. As such, the Court did not clearly resolve the question of precisely which state's marriage law applies in determining whether to consider a same-sex couple as married. For example, the Court did not opine on what the marital status of a same-sex couple would be if the couple was legally married in Massachusetts but lives in Georgia, which prohibits same-sex marriage.

The IRS has now held in Rev. Rul. 2013-17 that, for Federal tax purposes, the Service will recognize a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

Georgia income tax law does not directly provide that the same filing status be used for Georgia purposes as is used for Federal purposes, but it does provide that Federal Adjusted Gross Income be used as the starting point in computing Georgia taxable income. The Department has traditionally required taxpayers to use the same filing status for both Georgia and Federal income tax purposes since Federal Adjusted Gross Income is computed based on a person's Federal filing status. However, the Georgia Constitution, which limits marriage to relationships between a man and a woman, supersedes Georgia income tax law. Therefore, persons in a same-sex marriage who can now file a Federal return using married filing jointly or married filing separately status must continue to file Georgia returns using the single filing status or, if qualified, head of household filing status.

#### **6) How to File:**

If the person is in a same-sex marriage and a married filing jointly or married filing separately status was used on a Federal return, the person must:

- For Georgia purposes, recompute Federal Adjusted Gross Income and itemized deductions (if applicable) as if the person had filed a single Federal return.
- On Georgia Form 500 use single filing status or, if qualified, head of household filing status.
- Use the single/head of household exemption amount and the single/head of household standard deduction (if applicable).
- Use single tax rates, or if qualified, head of household tax rates.

This applies to all taxable years. Although amended returns may be filed for Federal tax purposes to change the filing status to married filing jointly or married filing separately, no amended returns may be filed for Georgia to change the filing status.

(Last updated: October 25, 2013)

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